

**CITY OF NEWTON
PURCHASING DEPARTMENT**

CONTRACT FOR NEWTON PUBLIC SCHOOLS

**PROJECT MANUAL:
SUPPLY AND DELIVER SCHOOL BUS TRANSPORTATION
SERVICES FOR NPS METCO PROGRAM
*INVITATION FOR BID #12-89***

Pre-Bid Meeting: June 14, 2012 at 11:00 a.m.

Bid Opening Date: June 21, 2012 at 11:00 a.m.

JUNE 2012

Setti D. Warren, Mayor

CITY OF NEWTON
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SERVICES FOR NPS METCO PROGRAM

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END OF SECTION

**CITY OF NEWTON
PURCHASING DEPARTMENT
INVITATION FOR BID #12-89**

The City of Newton invites sealed bids from Contractors to:

**SUPPLY & DELIVER SCHOOL BUS TRANSPORTATION
SERVICES FOR NPS METCO PROGRAM**

Pre-Bidder's Conference: 11:00 a.m., June 14, 2012, located at Newton City Hall, Room 204
Bids will be received until: 11:00 a.m., June 21, 2012

at the Purchasing Department, Room 204, Newton City Hall, 1000 Commonwealth Ave., Newton, MA 02459. Immediately following the deadline for bids all bids received within the time specified will be publicly opened and read aloud.

Work under this contract requires a contractor to PROVIDE AND OPERATE APPROXIMATELY NINE (9) yellow school buses for Newton Public Schools' METCO program. All buses will have seating capacity for 77 student passengers, include seat belts available for all passengers and GPS tracking systems as described within this bid manual. **Buses will be no older than five (5) years at the start of this contract.** In addition, three of our METCO buses, will have new digital cameras supplied, installed, maintained and monitored as described within this project manual. A total of 5 cameras (2 previously owned to be returned by current bus company and 3 purchased under this contract) will be installed, maintained and monitored as needed (to be determined by NPS' METCO program).

Bid will be awarded to the lowest responsive and responsible bidder based on grand total.

The term of the contract shall **extend for one (1) year from July 1, 2012 through June 30, 2013.** Pricing will be fixed for the entire contract year with no change in the contract price and terms and conditions. If for any fiscal year or any part thereof during the term of this Agreement, funds for the discharge of the City's obligations under this Agreement are not appropriated and authorized, or funds so appropriated and authorized are reduced or withdrawn, then this Agreement shall terminate. In the event of a termination due to non-appropriation or withdrawal of funds, services will be paid for up to the effective date of termination. In addition, Termination for Cause or Termination for Convenience language can be found in the Contract section 17 page 27 of this project manual.

All bids must be accompanied by a **bid deposit** in an amount that is not less than five percent (5%) of the value of the bid. Bid deposits, payable to the City of Newton, shall be either in the form of a bid bond, cash, a certified check, a treasurer's or cashier's check issued by a responsible bank or trust company.

All bids are subject to the provisions of M.G.L. Chapter 30B. Wages are subject to minimum wage rates determined by the Massachusetts Department of Labor and Industries and are provided in this Invitation for Bid document. The successful bidder will be required to furnish a **Performance and Labor and Materials Payment Bond** in the amount of **50% of the total contract price for one (1) year.**

All bids must be submitted with one (1) ORIGINAL and three (3) COPIES. All prices shall be FOB Delivered Newton, MA.

Bidders attention is directed to the requirements of the City of Newton Supplemental Equal Employment Opportunity, Anti-Discrimination and Affirmative Action Program and also to the Minority/Women Business Enterprise Plan, December 1999, which is hereby incorporated into the Contract Documents.

All City of Newton bids are available on the City's web site, www.newtonma.gov/bids. It is the sole responsibility of the contractor downloading these bids to ensure they have received any and all addenda prior to the bid opening. Addenda's will be available online within the original bid document as well as a separate file. If you download bids from the internet site and would like to make it known that your company has done so, email purchasing@newtonma.gov or fax Purchasing at 617-796-1227 with your NAME, ADDRESS, PHONE, FAX AND INVITATION FOR BID NUMBER .

The City of Newton will reject any and all bids when required to do so by the above referenced General Laws. In addition, the City of Newton reserves the right to waive any informalities in any or all bids, or to reject any or all bids (in whole or in part) if it be in the public interest to do so.

CITY OF NEWTON
Maryann LaRosee
Purchasing Department
June 7, 2012

CITY OF NEWTON
DEPARTMENT OF PURCHASING
INSTRUCTIONS TO BIDDERS

ARTICLE 1 - BIDDER'S REPRESENTATION

- 1.1 Each General Bidder (hereinafter called the "Bidder") by making a bid (hereinafter called "bid") represents that:
- 1.2 The Bidder has read and understands the Contract Documents and the bid is made in accordance therewith.
- 1.3 The Bidder has visited the site and is familiar with the local conditions under which the Work has to be performed.
- 1.4 Failure to so examine the Contract Documents and site will not relieve any Bidder from any obligation under the bid as submitted.

ARTICLE 2 - REQUEST FOR INTERPRETATION

- 2.1 Bidders shall promptly notify the City of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.
- 2.2 Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the *Chief Procurement Officer*, at purchasing@newtonma.gov or via facsimile (617) 796-1227. The City will answer such requests if received Friday, June 15, 2012 at 12:00 noon.
- 2.3 Interpretation, correction, or change in the Contract Documents will be made by Addendum which will become part of the Contract Documents. The City will not be held accountable for any oral instruction.
- 2.4 Addenda will be emailed to every individual or firm on record as having taken a set of Contract Documents.
- 2.5 Copies of addenda will be made available for inspection at the location listed in the Invitation for Bids where Contract Documents are on file, in addition to being available online at www.newtonma.gov/bids.
- 2.6 Bidders or proposers contacting ANY CITY EMPLOYEE regarding an Invitation for Bid (IFB) or a Request for Proposal (RFP), outside of the Purchasing Department, once an IFB or RFP has been released, may be disqualified from the bidding process.
- 2.7 Bidders downloading information off the internet web site are solely responsible for obtaining any addenda prior to the bid opening. If the bidder makes themselves known to the Purchasing Dept., at purchasing@newtonma.gov or via facsimile (617) 796-1227, they shall be placed on the bidder's list. Bidders must provide the Purchasing Dept. with their company's name, street address, city, state, zip, phone, fax, email address and **INVITATION FOR BID #12-89**.

ARTICLE 3 - PREPARATION AND SUBMISSION OF BIDS

- 3.1 Bids shall be submitted on the "Bid Form" as appropriate, furnished by the City.
- 3.2 All entries on the Bid Form shall be made by typewriter or in ink.
- 3.3 Any quantities indicated on the Bid Form or elsewhere in the Project Manual or Drawings are estimates only and are given solely as a basis for the comparison of bids. The City does not by implication or otherwise guarantee them to be even approximately correct. The Contractor shall have no claim for additional compensation, or refuse to do the work called for, by reason of the actual quantities involved being greater or lesser by any amount than those called for in the proposal.
- 3.4 Where so indicated on the Bid Form, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.

- 3.5 All proposals which contain abnormally high prices, or abnormally low prices, for any class of work, or those which contain unbalanced bidding in any form or manner may be rejected as informal.
- 3.6 Bid Deposits shall be submitted in the amount specified in the Invitation for Bids. They shall be made payable to the City of Newton and shall be either in the form of cash, certified check, treasurer's or cashier's check issued by a responsible bank or trust company, or a bid bond issued by a surety licensed to do business in the Commonwealth of Massachusetts; and shall be conditioned upon the faithful performance by the principal of the agreements contained in the bid.
- Bid deposits of the three (3) lowest responsible and eligible Bidders shall be retained until the execution and delivery of the Owner/Contractor agreement.
- 3.7 The Bid, including the bid deposit shall be enclosed in a sealed envelope with the following plainly marked on the outside:
- GENERAL BID FOR:
 - NAME OF PROJECT AND INVITATION NUMBER
 - BIDDER'S NAME, BUSINESS ADDRESS, AND PHONE NUMBER
- 3.8 Date and time for receipt of bids is set forth in the Invitation for Bids.
- 3.9 Timely delivery of a bid at the location designated shall be the full responsibility of the Bidder.

ARTICLE 4 - ALTERNATES

- 4.1 Each Bidder shall acknowledge Alternates (if any) in Section C on the Bid Form..
- 4.2 In the event an Alternate does not involve a change in the amount of the base bid, the Bidder shall so indicated by writing "No Change", or "N/C" or "0" in the space provided for that Alternate.
- 4.3 Bidders shall enter on the Bid Form a single amount for each Alternate which shall consist of the amount for work performed by the Contractor.
- 4.4 The low Bidder will be determined on the basis of the sum of the base bid and the accepted alternates.

ARTICLE 5 - WITHDRAWAL OF BIDS

- 5.1 Any bid may be withdrawn prior to the time designated for receipt of bids on written or telegraphic request. Telegraphic withdrawal of bids must be confirmed over the Bidder's signature by written notice postmarked on or before the date and time set for receipt of bids.
- 5.2 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.
- 5.3 No bids shall be withdrawn for sixty days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

ARTICLE 6 - CONTRACT AWARD

- 6.1 The City of Newton will award the contract to the lowest responsive and responsible Bidder within sixty days, Saturdays, Sundays, and legal holidays excluded after the opening of bids.
- 6.2 The City of Newton reserves the right to waive any informalities in or to reject any or all Bids if it be in the public interest to do so.
- 6.3 The City reserves the right to reject any bidder who has failed to pay any local taxes, fees, assessments, betterments, or any other municipal charge, unless the bidder has a pending abatement application or has entered into a payment agreement with the collector-treasurer.

- 6.4 As used herein, the term "lowest responsive and responsible Bidder" shall mean the Bidder (1) whose bid is the lowest of those bidders whose bid conforms in all respects to the Invitation for Bids and who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance; (2) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who, where the provisions of section eight B of chapter twenty-nine apply, shall have been determined to be qualified thereunder.
- 6.5 It is the purpose of the City not to award this contract to any bidder who does not furnish evidence satisfactory to the Chief Procurement Officer that he has the ability and experience in this class of work and that he has sufficient capital and plant to enable him to prosecute the same successfully and to complete it within the specified time and that he will complete it in accordance with the terms thereof.
- 6.6 Subsequent to the award and within five (5) days, Saturday, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the City a Contract in the form included in the Contract Documents in such number of counterparts as the City may require.
- 6.7 In the event that the City receives low bids in identical amount from two or more responsive and responsible Bidders, the City shall select the successful Bidder by a blind selection process such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process.

ARTICLE 7 - TAXES

- 7.1 The Bidder shall not include in this bid any tax imposed upon the sale or rental of tangible personal property in this Commonwealth, such as any and all building materials, supplies, services and equipment required to complete the work.
- 7.2 The City is exempt from payment of the Massachusetts Sales Tax, and the Bidder shall not include any sales tax on its bid. The City's exemption Number is E-046-001-404.

END OF SECTION

**CITY OF NEWTON
DEPARTMENT OF PURCHASING
BID FORM #12-89
SUPPLY & DELIVER SCHOOL BUS TRANSPORTATION
SERVICES FOR NPS METCO PROGRAM**

TO THE AWARDING AUTHORITY:

- A.** The undersigned proposes to furnish all labor and materials required for School Bus Transportation for the Newton Public School system for the contract price specified below in full accordance with the Contract Documents and Project Manual supplied by the City of Newton entitled:

Supply and Deliver School Bus Transportation Services for NPS METCO Program

for the contract price(s) specified below, subject to additions and deduction according to the terms of the specifications.

- B.** This bid includes addenda number(s) _____, _____, _____, _____.
- C.** Contractor must provide a firm fixed price for the items below.
- D.** Prompt Payment Discounts. Bidders are encouraged to offer discounts in exchange for an expedited payment. Payments may be issued earlier than the general goal of within 30 days of receipt of the invoice only when in exchange for discounted prices. Discounts will not be considered in determining the low responsible bidder.

Prompt Payment Discount _____% _____ Days

Prompt Payment Discount _____% _____ Days

Prompt Payment Discount _____% _____ Days

FY 2013 BID LIST

Line #	Description	Unit Cost	Estimated Quantity	Sub-Total Cost	Estimated Quantity Days per Year	Total Annual Cost
Line 1	77 Passenger Yellow Bus* Per-Day Rate (x 4 buses @ 5 hrs x 180 days per year)	\$ _____	4	\$ _____	180	\$ _____
Line 2	77 Passenger Yellow Bus* Per-Day Rate (x 5 buses @ 6 hrs x 180 days per year)	\$ _____	5	\$ _____	180	\$ _____
Line 3	Rate-Per-Hour for Overtime (10 hours per year)	\$ _____	10	\$ _____	N/A	\$ _____
Line 4	Supply, Installation, Maintenance and Monitoring of inside digital camera Seon Trouper FG4 160 GB hard drive day/night camera with audio OR approved equal.**	\$ _____	3	\$ _____	N/A	\$ _____

GRAND TOTAL CONTRACT PRICE: \$ _____

* Buses can be no older than five (5) years at the start of this contract.

** If bidding approved equal for Line 4 please include make, model, catalog cut and all product information at the time of bid submission.

Base Price for Fuel: \$ _____ per gallon. Proof required with bid.

E. The undersigned has completed and submits herewith the following documents:

- Bidder's Qualifications and References Form, 2 pages
- Signed Bid Form, One (1) ORIGINAL bid and three (3) COPIES, 2 pages
- Certificate of Non-Collusion, 1 page
- Proof of Base Fuel Price, Section 1.8
- Bid Surety Deposit, Section 2.1
- Company Resume/History, Sections 3.1 and 3.2
- Certified Audited Financial Statement, Section 3.3

F. The undersigned agrees that, if selected as contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the City of Newton, execute a contract in accordance with the terms of this bid. The undersigned hereby certifies that s/he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that s/he will comply fully with all laws and regulations applicable to awards made subject to M.G.L. Chapter 30B.

The undersigned further certifies under the penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this section the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from public contracting or subcontracting in the Commonwealth under the provisions of M.G.L. Chapter 29, Section 29F or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date _____

(Name of Bidder)

BY: _____

(Printed Name and Title of Signatory)

(Business Address)

(City, State Zip)

(Telephone & FAX)

(E-mail address)

NOTE: If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; if an individual, give residential address if different from business address; and, if operating as a d/b/a give full legal identity. Attach additional pages as necessary.

END OF SECTION

CITY OF NEWTON

BIDDER'S QUALIFICATIONS AND REFERENCES FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City of Newton for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: _____
2. WHEN ORGANIZED: _____
3. INCORPORATED? _____ YES _____ NO DATE AND STATE OF INCORPORATION: _____
4. IS YOUR BUSINESS A **MBE**? ____ YES ____ NO **WBE**? ____ YES ____ NO or **MWBE**? ____ YES ____ NO
- * 5. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

- * 6. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU? _____ YES ____ NO
IF YES, WHERE AND WHY?

- * 7. HAVE YOU EVER DEFAULTED ON A CONTRACT? _____ YES _____ NO
IF YES, PROVIDE DETAILS.

- * 8. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:
(Use separate sheet if necessary)

- * 9. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHALL BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME: _____
OWNER: _____

CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO

TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

10. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Newton in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: _____ BIDDER: _____

SIGNATURE: _____

PRINTED NAME: _____ TITLE: _____

END OF SECTION

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

(Signature of individual)

Name of Business

CONTRACT FORMS

The awarded bidder will be required to complete and submit the following documents in order to execute a contract pursuant to this bid.

The forms are provided here for informational purposes only.

None of the following forms are required at the time of bid submittal.

CITY - CONTRACTOR AGREEMENT

CONTRACT NO. _____

THIS AGREEMENT made this _____ day of _____ in the year Two Thousand and Twelve by and between the CITY OF NEWTON, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the CITY, acting through its Chief Procurement Officer, but without personal liability to her, and

hereinafter referred to as the CONTRACTOR.

The parties hereto for the considerations hereinafter set forth agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to furnish and to deliver to the City at such times, at such place or places, in such manner, and in such quantities as the City may direct, and at the unit prices quoted in the Contractor's bid the following item or items:

SUPPLY & DELIVER SCHOOL BUS TRANSPORTATION SERVICES FOR NPS METCO PROGRAM

- II. CONTRACT DOCUMENTS.** The Contract Documents consist of the following documents which are either attached to this Agreement or are incorporated herein by reference:

- a. This CITY-CONTRACTOR Agreement;
- b. The City's INVITATION FOR BID #12-89 issued by the Purchasing Department;
- c. The Project Manual for the Newton **METCO School Bus Transportation Services** including the Instructions to Bidders; General Conditions; Special Conditions; MWBE/AA Requirements, Wage Rate Requirements and Wage Rate Schedule(s) including any updated prevailing wage rate schedules if applicable; The Supplementary Special Conditions; General Requirements and Project Specifications; and Drawings, if included or referenced therein;
- d. Addenda Number(s) _____;
- e. The Bid Response of the CONTRACTOR submitted for this Project and accompanying documents and certifications;
- f. Certificate(s) of Insurance and surety bond(s), if any, submitted by the CONTRACTOR in connection with this Project;
- g. Duly authorized and executed Amendments, Change Orders or Work Orders issued by the CITY after execution of this CITY-CONTRACTOR Agreement.

This CITY-CONTRACTOR Agreement, together with the other documents enumerated in this Article, constitute the entire Agreement between the CITY and the CONTRACTOR.

- III. PRIORITY OF DOCUMENTS.** In the event of inconsistency between the terms of this CITY -CONTRACTOR Agreement and the Project Manual, the terms of this Agreement shall prevail.

- IV. APPLICABLE STATUTES.** All applicable federal, state and local laws and regulations are incorporated herein by reference and the Contractor agrees to comply with same.

- V. CONTRACT TERM.** The term of this contract shall extend **from July 1, 2012 through June 30, 2013 and shall not exceed 25% of the contract total.** Pricing will be fixed for the entire contract period with no change in the contract price and terms and conditions. The City reserves the right to terminate this contract prior to the expiration date in the event total expenditures reach the above stated contract total
- VI. QUANTITIES.** The quantities specified in the Project Manual are approximate and are based on previous consumption. It is specifically understood the City does not agree to purchase any specific quantity, and purchases will be made to cover actual requirements only. The City may increase or decrease the quantity of any item specified without change in price per unit of quantity as stated in the Contractor's Bid Response.
- VII. MATERIALS.** The Contractor agrees, unless otherwise specified, that all equipment, materials and supplies furnished under this contract are to be first quality, new and unused.
- VIII. AUTHORIZATION OF AND PAYMENT FOR WORK PERFORMED.** The execution of this contract does not constitute a notice to proceed or authorization to perform work or make deliveries. No work shall be commenced or deliveries made unless authorized by a written Work Order issued by the City specifying the equipment, materials or supplies to be delivered. The Contractor will be paid following completed delivery and acceptance of the equipment, materials or supplies ordered in accordance with the Contract. The City will use best efforts to pay within thirty (30) days of receipt of an invoice for the delivered equipment, materials or supplies or acceptance of same whichever date is later.
- IX. CLAIMS FOR MATERIALS OR LABOR.** In the event any claims have been filed with the City for material or labor delivered or performed pursuant to this contract, the City shall be under no obligation to make any payment until such claims are adjusted to the satisfaction of the City. Any and all liens for supplies may be paid off by the City within twenty (20) days after the filing for record as provided by law of a notice of such liens, except where the claim on which the lien is filed is being litigated by the Contractor, and in such case the City may pay the amount of any final judgment or decree on any such claim. All money paid by the City in settlement of liens and claims as aforesaid, with the costs and expenses incurred by the City in connection therewith shall be charged to the Seller, bearing interest at the rate of six percent (6%) per annum, and be deducted from the next payment falling due the Seller under the terms of this contract.
- X. UNIT PRICES.** It is agreed that the unit prices listed are maximum prices and that the City shall be entitled to take advantage of any decreasing market conditions, decreases to be governed by the manufacturers' price listing as might be generally adopted in the trade, or by the same percentage that the Seller may reduce prices to others who purchase in similar quantities and under similar conditions.
- XI. RESPONSIBILITY FOR THE WORK/INDEMNIFICATION.** In the performance of any work, including the delivery of equipment, materials or supplies, pursuant to this Contract, the Contractor shall take all responsibility for the work, and shall take all precautions for preventing injuries to persons and property in or about the work and shall defend, indemnify and hold the City harmless from all loss, cost, damage or expense arising from injuries to persons or property in or about the work. The Contractor shall be responsible for any damage which may be caused by the failure or insufficiency of any temporary works. He shall effectively protect his work and shall be liable for all damage and loss by delay or otherwise caused by his neglect or failure so to do.
- XII. WARRANTY.** Except as may be otherwise provided in the Project Manual, the Contractor shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of equipment, materials or supplies furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Contractor.
- XIII. PATENT INDEMNIFICATION.** The Contractor agrees to assume the defense of and shall indemnify and save harmless the City and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Contractor, within a reasonable time, shall at its own expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment, or apparatus and refund the sums paid therefor.
- XIV. INSPECTION.** For the purposes of inspection of the equipment, materials and supplies covered by this contract, the Contractor shall give the City free access to his works and furnish every facility for properly inspecting such equipment, materials and supplies, and shall furnish full information, whenever requested, relating thereto. Approval by any inspector of the City shall not relieve the Contractor from his obligation to comply in all respects with the contract.

- XV. ASSIGNMENT/SUB-CONTRACTING.** The Contractor agrees that he will not sell, assign or transfer this Contract or any part thereof or interest therein without the prior written consent of the City.
- XVI. INSTALLATION.** If any of the equipment, materials and supplies covered by this contract is to be installed by either the Contractor or the City, the Contractor shall, upon request of the City, furnish a competent employee to supervise the installation without expense to the City, unless otherwise provided herein. Such supervisor, or other employees furnished by the Contractor, shall be the agents of the Contractor and not of the City, and the Contractor hereby agrees to indemnify the City and hold it harmless from and against any and all loss, costs, damage, and expense sustained as the result of negligence or other conduct on the part of such supervisor or employee.
- XVII. TERMINATION.** The City of Newton may, by written notice of default to the Contractor, terminate the whole or any part of this Contract or any Shipping or Work Order issued pursuant thereto in any one of the following circumstances:
- a. **FOR CAUSE.** If, for any cause, the Contractor fails to fulfill in a timely manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date of such termination. Such notice shall be given not less than five (5) days prior to the effective date of termination and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed through the date of termination.
- b. **FOR CONVENIENCE.** The City may terminate this Contract at any time for its convenience and without penalty by giving written notice to the Contractor of such termination. Such notice shall be given not less than five (5) days prior to the effective date of termination. If the Contract is terminated for the convenience of the City, the Contractor shall be entitled to payment for any satisfactory work completed through the date of termination.
- c. **FOR NON-APPROPRIATION.** In the event that this Contract extends beyond the fiscal year in which it is first entered into, and notwithstanding any provision to the contrary, the City shall cancel this Contract in the event that funds are not appropriated or otherwise made available to support the continuation of performance by the Contractor in any subsequent fiscal year. Written notice of cancellation for non-appropriation shall be given not less than five (5) days prior to the effective date of cancellation and the Contractor shall be entitled to payment for any satisfactory work completed through the date of cancellation.
- XVIII. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- XIX. SEVERABILITY.** The provisions of this Contract are severable. If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Contract.

THIS SPACE LEFT BLANK INTENTIONALLY

XX. AMENDMENTS TO THIS CONTRACT. This Contract may not be amended except in writing executed in the same manner as this CITY-CONTRACTOR Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

CONTRACTOR

By_____

Print Name_____

Title_____

Date _____

Affix Corporate Seal Here

City funds are available in the following account number:

19SA12999-538301

I further certify that the Mayor, or his designee, is authorized to execute contracts and approve change orders.

By_____

Comptroller of Accounts

Date_____

CITY OF NEWTON

By_____

Chief Procurement Officer

Date_____

By_____

School Committee

Date_____

Approved as to Legal Form and Character

By_____

Associate City Solicitor

Date_____

CONTRACT AND BONDS APPROVED

By_____

Mayor or his designee

Date_____

CERTIFICATION REGARDING LOCAL TAXES

The undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor has paid all local taxes, fees, assessments, betterments, or any other municipal charge, unless the Contractor has a pending abatement application or has entered into a payment agreement with the City of Newton collector-treasurer.

*Signature of Individual
or Corporate Contractor (Mandatory)

** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

By: _____
Corporate Officer
(Mandatory, if applicable)

Date: _____

* Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

** Your social security number will be furnished to the City of Newton Treasurer-Collector to determine whether you have paid all local taxes or fees to the City. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of _____
(insert full name of Corporation)
2. corporation, and that _____
(insert the name of officer who signed the **contract and bonds.**)
3. is the duly elected _____
(insert the title of the officer in line 2)
4. of said corporation, and that on _____
(insert a date that is ***ON OR BEFORE*** the date the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. _____ the _____
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: _____
(Signature of **Clerk or Secretary**)*

AFFIX CORPORATE
SEAL HERE

7. Name: _____
(Please print or type name in line 6)*

8. Date: _____
(insert a date that is ***ON OR AFTER*** the date the officer signed the **contract and bonds.**)

* The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.

ATTESTATION

Pursuant to MG c. 62C, § 49A, the undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.*

**Signature of Individual
or Corporate Contractor (Mandatory)

*** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

By: _____
Corporate Officer
(Mandatory, if applicable)

Date: _____

* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

*** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.

CITY OF NEWTON, MASSACHUSETTS

PERFORMANCE BOND

Know All Men By These Presents:

That we, _____, as PRINCIPAL, and _____, as SURETY, are held and firmly bound unto the City of Newton as Obligee, in the sum of _____ dollars (\$_____) to be paid to the Obligee, for which payments well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said PRINCIPAL has made a contract with the Obligee, bearing the date of _____, 2012 for the construction of _____ in Newton, Massachusetts.
(Project Title)

Now, the condition of this obligation is such that if the PRINCIPAL and all Sub-contractors under said contract shall well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of said contract on its part to be kept and performed during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the SURETY, and during the life and any guarantee required under the contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions to said contract that may hereafter be made, notice to the SURETY of such modifications, alterations, changes or additions being hereby waived, then this obligation shall become null and void; otherwise, it shall remain in full force, virtue and effect.

In the event, that the contract is abandoned by the PRINCIPAL, or in the event that the Obligee terminates the employment of the PRINCIPAL or the authority of the PRINCIPAL to continue the work said SURETY hereby further agrees that said SURETY shall, if requested in writing by the Obligee, take such action as is necessary to complete said contract.

In Witness Whereof, the PRINCIPAL and SURETY have hereto set their hands and seals this ____day of _____ 2012.

PRINCIPAL

SURETY

BY _____
(SEAL)

BY _____
(ATTORNEY-IN-FACT) (SEAL)

(Title)

ATTEST: _____

ATTEST: _____

CITY OF NEWTON, MASSACHUSETTS

PAYMENT BOND

Know All Men By These Presents:

That we, _____, as PRINCIPAL, and _____, as SURETY, are held and firmly bound unto the City of Newton as Obligee, in the sum of _____ dollars (\$_____) to be paid to the Obligee, for which payments well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said PRINCIPAL has made a contract with the Obligee, bearing the date of _____, 2012, for the construction of _____ in Newton, Massachusetts.
(Project Title)

Now, the conditions of this obligation are such that if the PRINCIPAL and all Sub-contractors under said contract shall pay for all labor performed or furnished and for all materials used or employed in said contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said contract that may hereafter be made, notice to the SURETY of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purposes or items set out in, and to be subject to, provisions of M.G.L. c. 30, sec. 39A, and M.G.L. c. 149 sec. 29, as amended, then this obligation shall become null and void; otherwise it shall remain in full force, virtue and effect.

In Witness Whereof, the PRINCIPAL and SURETY have hereto set their hands and seals this ____ day of _____ 2012.

PRINCIPAL

SURETY

BY _____
(SEAL)

BY _____
(ATTORNEY-IN-FACT) (SEAL)

(Title)

ATTEST: _____

ATTEST: _____

CITY OF NEWTON
MINORITY/ WOMEN BUSINESS ENTERPRISE PLAN
DECEMBER 1, 1999
JANUARY 21, 2010 revised

STATEMENT OF POLICY:

Whereas it is the policy of the government of the United States of America, the Commonwealth of Massachusetts and the City of Newton that no person shall be discriminated against in any manner whatsoever on the grounds of race, religion, color, sex, handicap or national origin; and

Whereas, it is the policy of the government of the United States of America that no person shall, on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program of activity funded entirely or in part by the City, the State or Federal government; and

Whereas, it is the policy of the government of the United States of America to encourage that Minority/Women Business Enterprises shall have the maximum practicable opportunity to participate in Federal and State assisted projects; and all City funded contracts; and

Whereas, it is the policy of the City of Newton to encourage that minority/women business enterprises shall have the maximum practicable opportunity to participate in all City funded contracts; and

Whereas, the City of Newton, as a recipient of Federal and State funds subscribes to the above policies and will fully comply With Federal, State and local laws and directives governing non-discrimination, equal opportunity and affirmative action in all municipal activities; and

Whereas, to further enunciate the equal opportunity policy of the City of Newton's Minority/Women Business Program, the following responsibilities are specified

This MINORITY/ WOMEN Business Enterprise Plan sets forth the administrative standards for the further implementation of the City of Newton's policy of the utilization of minority contractors and subcontractors.

The City of Newton strongly affirms that it will not discriminate in any contractual procedures against any persons because of race, color, religion, age, disability, sex or national origin. This policy shall be administered with a positive supportive attitude.

It is the responsibility of the City of Newton to take affirmative steps to implement this policy to insure equality of opportunity in conducting the Program including notifying those persons and businesses doing business with the City, that contracts for goods, services and construction, shall be made Without reference or regard to race, color, sex, age, handicap, religion or national origin.

Setti D. Warren Mayor

CITY OF NEWTON
MINORITY/ WOMEN BUSINESS ENTERPRISE PLAN
JANUARY 21, 2010

I. DEFINITIONS:

A. **Minority Person**- the term includes a person who is of Black Hispanic, Asian, American Indian or Cape Verdean origin.

B. **Minority Business Enterprise (MBE)** -- the term shall mean a business a) that is certified by SOMWBA; or b) I provides evidence satisfactory to the City's Affirmative Action Officer that it is a business owned or controlled by one or more of the following:

- an individual who is a minority person,
- a partnership or joint venture controlled by minority persons in which at least 51 % of the ownership interest is held by minority persons or,
- a corporation or other entity controlled by minority persons and in which at least 51 % of the stock is owned by one or more minority persons.

C. **Contract Compliance Officer** - the Chief Procurement Officer or his/her designee responsible for the implementation of Newton's Minority/Women Enterprise Plan ("MWBE Plan") and activities.

D. **MCAD** - Massachusetts Commission Against Discrimination.

E. **SOMWBA** -- State Office of Minority/Women Business Assistance.

F. **City** - The City of Newton.

G. **Women Business Enterprise (WBE)** - the term shall mean a business a) that is certified by SOMWBA; or b) provides evidence satisfactory to the City's Affirmative Action Officer that it is a business owned or controlled by one or more of the following:

- an individual who is a woman.
- a partnership or joint venture controlled by women in which at least 51% of the ownership interest is held by women, or
- a corporation or other entity controlled by women and in which at least 51% of the stock is owned by one or more women.

H. **MWBE** — Minority or Women Business Enterprise

II. GOALS:

Newton's Minority/Women Enterprise Plan ("MWBE Plan") shall be guided by the goals presented below to promote minority/women opportunities within the City.

These goals comprise the framework for those activities to be implemented as part of the MWBE Plan:

To take affirmative action in expanding opportunities for minority and women owned firms in obtaining contracts within the City of Newton.

To assure that all contractors, regardless of race color, religion, creed, national origin, sex, age, ancestry or handicap, shall have equal opportunity to City contracting activities.

To award, of the total annual City contract dollars expended, 10 percent to MBE and 5 percent to WBE for construction; for goods and services, 5 percent WBE and 5 percent MBE.

III. SOLICITATION ACTIVITIES:

To notify MWBEs of upcoming contracts for construction, professional services and supplies, funded in whole or in part with Federal, State, and City funds, the following activities will be undertaken. In addition on a regular basis, the City of Newton will distribute to its listing of MWBEs and SOMWBA, a summary of upcoming contract opportunities which are subject to the City's MWBE Plan.

A. Construction Contracts

All construction contracts with an estimated value over \$50,000 will be formally advertised within local, regional, minority and special interest publications at least 14 days prior to the bid opening date.

For all such construction contracts a "Notice of Solicitation" of a project going out to bid will be distributed to appropriate SOMWBA or City certified firms at least 14 days prior to the bid opening date.

B. Contracts for Professional Services

The City of Newton will send notification of its advertised Request for Proposals to appropriate SOMWBA or City certified firms. Responding MWBE firms will be considered for contract award within the bounds of generally accepted management practice or with the applicable procurement law relating to securing the lowest cost and best services available.

C. Procurement of Supplies

The City of Newton will (where feasible) utilize MWBEs for the procurement of supplies in accordance with City purchasing procedures. These efforts will be documented and reported to MCAD, and the Mayor's office on a quarterly basis.

IV. CONSTRUCTION ACTIVITIES:

A. Goals

The City of Newton bid documents and contracts with an estimated value over \$50,000 will contain the City's goal of 10% for MBE and 5% for WBE utilization for subcontracts.

B. Pre-Bid Conference

To affirmatively further the opportunities available to prospective bidders, the City will hold a pre-bid conference 5-7 days prior to the bid opening date for all City construction contracts and subcontracts with an estimated value over \$50,000.

The pre-bid conference will provide an opportunity for contractors to: review and clarify the technical requirements of the projects, review the City's MWBE Plan; and review Equal Opportunity requirements. The City will advertise this conference and extend invitations to interested contractors as part of the notice of solicitation.

C. Bid Submission

All bids for City of Newton contracts with an estimated value over \$50,000 shall include a certification of intent to be completed by the bidder stating his/her intent to comply with the City's MWBE Plan. Failure to include this certification shall be an informality which may be waived if such certification is received prior to the award of the contract.

D. Contract Execution

Upon notification of award of the contract, the bidder shall provide a written plan detailing how it will comply with the MWBE Plan.

E. Monitoring

Throughout the duration of the contract, the City of Newton through its Contract Compliance Officer, will monitor the progress and activities of all contractors and subcontractors as they attempt to comply with the MWBE Plan.

F. Enforcement

In the case of clear neglect to make a good faith effort to comply with this MWBE Plan, the City of Newton reserves the right to designate contractor, after a hearing, as ineligible for future City bid awards.

V. CONTRACT COMPLIANCE OFFICER/DUTIES AND RESPONSIBILITIES:

The Contract Compliance Officer, as liaison between minority firms and the City of Newton will have the overall responsibility for the implementation of Newton's MWBE Plan. This responsibility includes the development, management, dissemination of information; the provision of technical assistance to minority firms including clarification of procedures to be implemented; maintenance of relevant documentation; completion of reporting requirements; and performance of monitoring and evaluation activities; and maintenance and updating of listings of minority/women business.

The Contract Compliance Officer has oversight of all City procurements for construction, professional services and supplies and shall coordinate the implementation of the MWBE Plan with other City departments.

THE CITY OF NEWTON, MASSACHUSETTS
SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY
ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

- I. The requirements hereinafter set forth apply to construction contracts which involve an expenditure by the City of \$50,000 or more.
- II. For purposes of this contract "minority" refers to Asian Americans, Black, Hispanics American Indians and Cape Verdeans. The City refers to the- City of Newton
- III. During the performance of this contract the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor) , for himself, his assignees, and successors in interest, agree as follows:

In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and the selection of apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the City setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (MGL Chapter 151 B) . (See Attachment A)

2. In connection with the performance of work under this contract, the Contractor shall undertake in good faith, affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination -in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal employment: opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, Layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age or sex. A purpose of- this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future City public construction projects
-
1. As part of this obligation of remedial action under the foregoing section, the contractor shall maintain on this project a not less than 5 percent ratio of minority employee man hours to total man hours in each job category, including, but not limited to, bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in Section 44C of Chapter 149 of the Massachusetts General Laws.
 2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals, from the Contractor's affirmative action program approved by the City, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the City.

1. At the discretion of the City, there maybe established for the life of this contract a body to be known as the Liaison Committee, The Liaison Committee shall be composed of the Compliance Officer and one representative each from the Departments administering this project, hereinafter called the administering Departments, and such other representatives as may be designated by the City.
2. The Contractor (or, his/her agent, if any, designated by him/her as the onsite equal employment opportunity officer) shall recognize the Liaison Committee as the affirmative action body, and shall establish a continuing working relationship with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.
3. The Contractor shall prepare manning tables on a quarterly basis.* These shall be broken down into projections, by week, for workers required in each trade. Copies shall be furnished one week in advance of the initiation of work and quarterly thereafter to the City and to the Liaison Committee.
4. Records of employment referral orders, prepared by the Contractor, shall be made available to the City and to the Liaison Committee on request.
5. The contractor shall prepare weekly reports in a form approved by the City of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these reports shall be provided at the end of each week to the City and to the Liaison Committee.

* If job is less than three months, prepare for length of job.

- VI. If the Contractor shall use any sub contractor on any work performed under this contract, he/she shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods. It shall include notification to the State Office of: *Minority Business Assistance* or As designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.
- VII. In the employment of journeyman, apprentices, trainees, and advanced trainees, the Contractor shall give preference to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged there from or released from active duty therein, and who are qualified to perform the work to which the employment relates, and, secondly to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States
- VIII. A designee of the City and a designee of the Liaison Committee shall each have the right of access no the Construction site,
- IX. **Compliance with Requirements**
The Contractor shall comply with the provisions of Chapter 151 B of the Massachusetts General Laws, which are herein incorporated by reference and made as amended by Executive Order 227, and of Chapter 151B as amended, of the Massachusetts General Laws, both *of which* are herein incorporated by reference and made a part of this contract.
- X. **Non-Discrimination**
The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on the grounds of race, color, religious creed,

national origin, age or sex in employment practices, in the selection or retention of sub-contractors, or in the procurement of materials and rentals of equipment.

XI. Solicitations for sub-Contracts and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under his contract relative to non-discrimination and affirmative action.

XII. Bidders Certification Requirement

1. The following certification statement will be inserted in the bid document just above the bidder's signature.

"The bidder hereby certifies he shall comply with the minority manpower ratio and specific action steps contained in the City of Newton, Massachusetts Supplemental Equal Employment-- Opportunity Anti-Discrimination and Affirmative Action Program. The Contractor receiving the award of the contract shall be required to obtain from each of its subcontractors and submit to the contracting or, administering agency prior to the performance of any work under said contract a certification by said subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in the City of Newton Massachusetts Supplemental Equal Employment Opportunity Anti -Discrimination and Affirmative Action Program.

XIII. Contractor's Certification

A Contractor's certification form must be signed by all successful low bidders prior to award by the City. A Contractor shall not be eligible for award of a contract unless the contractor has executed and submitted the Contractor's Certification, which shall be deemed a part of the resulting contract. (See Attachment B)

XIV. Subcontractor's Certification

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor a subcontractor's certification setting forth the subcontractor's compliance with this program, which shall be deemed a part of the resulting subcontract. (See Attachment C)

XV. Compliance - Information, Reports and Sanctions

1. The Contractor will provide all information and reports required by the administering department or, the City on instruction issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which

may be determined by the City to affect the employment of personnel. This provision shall apply only to information pertinent to the City's supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering department or the City as appropriate and shall set forth what efforts he/she has made to obtain the information.

2. Whenever the administering department, the City, or the Liaison Committee believes the General Contractor or any Subcontractor may not, be operating in compliance with the terms of this Section, the City directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Section. If the City or its agent finds the General Contractor or any Subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the City or its agent bring such Contractor into compliance. In the event, that such Contractor fails or refuses to fully perform such steps, the City shall make a final report of non-compliance, and recommend to the administering department the imposition of one or more of the sanctions listed below. If, however, the City believes the General Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance, within fourteen days at the receipt of the recommendations of the City, the administering department shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

- (a) The recovery by the administering department from the General Contractor of 1/100 of!! of the contract award price or \$1000 whichever sum is greater, in the nature of liquidated damages or
if a Subcontractor is in non-compliance, the recovery by the administering department from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the sub-contract price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply
- (b) The suspension of *any* payment of part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;
- (c) The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate within a specified time his/her compliance
with the terms of the City's affirmative action construction contract requirements; OR,
- (d) The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering department for a
- (e) Period of up to three years.

3. If at any time after the imposition of one or more of the above sanctions (unless the contract, has been terminated), a Contractor is able to demonstrate that he/she is in compliance with this section, he/she may request the City to suspend the sanctions conditionally pending a final determination by the City as to whether the Contractor is in

compliance. Upon final determination of the City, the administering department, based upon the recommendation of the City, shall either lift the sanctions or continue them.

4. Sanctions enumerated under Section XV shall not be imposed by the City except after the General Contractor or Subcontractor has had an opportunity for full and fair hearing with City. The non-compliance investigation shall be initiated without prior notice to the contractor. Any sanctions to be imposed shall be, set forth fully and completely in writing, and may then be appealed to the City in writing by the Contractor.

.XIV. Severability

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

FAIR EMPLOYMENT LAW

The Fair Employment Law declares that it is illegal to discriminate on the basis of race, color, religious creed, national origin, sex, sexual orientation, age, ancestry or disability

IT IS UNLAWFUL:

- to print or circulate any advertisement or use any application form which directly or indirectly specifies any limitation on the basis of race, color, religious creed, national origin, sex, sexual orientation, age, ancestry or disability.
- to discharge or refuse to hire any individual on file basis of their race, color, religious creed, national origin, sex, sexual orientation, age, ancestry, or disability.
- to discriminate against any individual in matters relating to compensation, terms, conditions, or privileges of employment because of their race, color, religious creed, national origin, sex, sexual orientation, age, ancestry or disability.
- to require a woman to leave her job at some arbitrary stage in her pregnancy or to refuse to let her return to work until a specified time set by the employer.
- to grant a female employee at least eight weeks leave for purposes of childbirth or to treat her absence differently than any other absence due to disability.
- to require an employee to remain at work during any day or part thereof that s/he observes as a religious holiday provided that the employee gives a ten-day notice and the absence does not cause undue hardship to the employer.
- to discharge or refuse to hire any person because of their failure to furnish information concerning admission to a center for the treatment of mentally ill persons.
- to discriminate against a job applicant for failure to furnish information, written or oral, concerning: A) an arrest, detention or disposition regarding a violation of law in which no conviction resulted; B) a first conviction for any of the following misdemeanors: driving under the influence, simple assault, speeding, minor traffic violations, disturbance of the peace; or C) conviction for a misdemeanor where the date of the conviction or end of period of incarceration, if any, occurred more than five years prior to the employment application, and the applicant has not been convicted of any offense within the five years immediately before the date of application.

RETALIATION

It is illegal to retaliate against any person because s/he has opposed any practices forbidden under this Chapter or because s/he has filed a complaint, testified, or assisted in any proceeding before the Commission. It is also illegal to aid, abet, incite, compel or coerce the doings of any of the acts forbidden under this Chapter or to attempt to do so.

SEXUAL HARASSMENT

151B:1,18 The term "sexual harassment" shall mean sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment, or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

COMPLAINTS

All complaints must be filed in writing. Information on the filing of complaints can be obtained by contacting the MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION at the following locations:

Boston office:
One Ashburton Place
Room 601
Boston, MA 02108
(617) 727-3990

Springfield office:
436 Dwight Street
Suite 315
Springfield, MA 01103
(413) 739-2145



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

Prevailing Wage Rates
As determined by the Director under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

JOANNE F. GOLDSTEIN
Secretary
HEATHER E. ROWE
Director

Awarding Authority: City of Newton
Contract Number: 12-89 **City/Town:** NEWTON
Description of Work: Newton Public Schools - Supply and Deliver School Bus Transportation Services for METCO Program

Job Location: Various Locations

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
School Bus						
Athletic/ Field Trips/ Extra-Curricular <i>SCHOOL BUS - 25/LAIDLAW</i>	07/01/2011	\$17.57	\$-	\$0.00	0.00	\$17.57
School Bus Driver <i>SCHOOL BUS - 25/LAIDLAW</i>	07/01/2011	\$24.58	\$-	\$0.00	0.00	\$24.58

Additional Apprentices Information:

Minimum wage rates for apprentices employed on public works projects are listed above as a percentage of the pre-determined hourly wage rate established by the Commissioner under the provisions of the M.G.L. c. 149, ss. 26-27D. Apprentice ratios are established by the Division of Apprenticeship Training pursuant to M.G.L. c. 23, ss. 11E-11L.

All apprentices must be registered with the Division of Apprenticeship Training in accordance with M.G.L. c. 23, ss. 11E-11L.

All steps are six months (1000 hours) unless otherwise specified.

- * Ratios are expressed in allowable number of apprentices to journeymen or fraction thereof.
- ** Multiple ratios are listed in the comment field.
- *** APP to JM; 1:1, 2:2, 2:3, 3:4, 4:4, 4:5, 4:6, 5:7, 6:7, 6:8, 6:9, 7:10, 8:10, 8:11, 8:12, 9:13, 10:13, 10:14, etc.
- **** APP to JM; 1:1, 1:2, 2:3, 2:4, 3:5, 4:6, 4:7, 5:8, 6:9, 6:10, 7:11, 8:12, 8:13, 9:14, 10:15, 10:16, etc.

This wage schedule must be posted by the contractor at the work site in accordance with M.G.L. ch. 149, sec. 27. Failure of the employer to pay "prevailing wage rates," which are the "total rates" listed above, on public works projects is a violation of M.G.L. ch. 149, sec. 27. Contractors with questions about the wage rates or classifications included on the wage schedule have an affirmative obligation to inquire with DLS at www.mass.gov/dols or at 617-626-6952. Employees not receiving such rates should report the violation to the Fair Labor Division of the Office of the Attorney General, 100 Cambridge Street, Boston, MA 02108; Tel:

Issue Date: 06/06/2012

Wage Request Number: 20120606-018

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NEWTON PUBLIC SCHOOLS
SUPPLY & DELIVER SCHOOL BUS TRANSPORTATION
SERVICES FOR NPS METCO PROGRAM
STATEMENT OF WORK

1.0 General Provisions

1.1 Description of Service: The City of Newton (“City”), acting on behalf of Newton Public Schools (NPS), seeks bids for regular daily Newton METCO school bus transportation roundtrip between Boston and Newton. The City intends to award one (1) contract for Newton METCO transportation to the lowest responsive and responsible bidder.

The City estimates using nine (9) buses for Newton METCO transportation. Newton is asking for vendors to bid on quantity estimates for yellow school buses with seating for 77 student passengers. The NPS Transportation and Newton METCO offices, who oversee transportation services, will determine the actual number of buses that will be used for daily service based upon enrollment and appropriations. The Contractor must assess the approximate number of buses, backup buses as well as drivers and backup drivers that are required in order to provide service for all regular daily service. **Buses cannot be older than five (5) years at the start of this contract.**

The City reserves the right to increase or decrease the actual number of buses that will be used for these services as circumstances may require. NPS makes no representations or guarantees as to the number of buses that will be required throughout the contract term.

The City reserves the right to demand the transfer or removal of any driver at any time when any safety violation or unsafe driving habits have occurred and or that the well being of students has been jeopardized or when the City feels that these contract terms herein have been violated. .

Field Service Representative: The Contractor must provide a Field Service Representative for this contract who will be on call while any bus is in service under the Contract (see Section 9.3).

Facilities: The Contractor must maintain a dispatch office, telephone answering service, and two-way communications system sufficient to maintain contact between the dispatcher, drivers and buses at all times while buses are in service (see Section 9.1). The Contractor shall be required to install a phone line in the dispatch office to be used exclusively for NPS METCO business (see Section 9.1). The successful bidder shall, within thirty (30) days of the contract award, provide the City with the address of the dispatch office.

The Contractor's bus storage yard must be located in Newton or in a city or town contiguous, i.e., in close proximity to Newton (see Section 8.6). In addition, the Contractor must have access to sufficient garage/maintenance facilities and full-time mechanics to ensure timely repairs so as not to disrupt transportation services (See Section 8.5). The successful bidder

shall, within thirty (30) days of the contract award, provide the City with the address(es) of the bus storage yard and garage along with proof of the lease(s).

Prevailing Wage Rates: School bus drivers shall be paid based on the prevailing wage rates in accordance with Commonwealth of Massachusetts General Laws, Chapter 71, Section 7A. (The applicable wage rates are included with the bid submittal forms.)

1.2 Contract Term: The Contract term shall be for a period of one (1) year, commencing on July 1, 2012 through June 30, 2013, subject to annual appropriation. Pricing will be fixed for the entire contract period with no change in the contract price and terms and conditions.

1.3 Availability of Funding: The continuation of school bus transportation services each year shall be subject to appropriation of funds by the City and the availability of funding from the Commonwealth of Massachusetts. The City expressly reserves the right to terminate this Agreement upon thirty (30) days prior written notice to the Contractor in the event sufficient funds are not available during the contract period.

1.4 The Contractor's duties and obligations under the contract shall not be assigned or subcontracted to another party without the prior written consent of the City. The contract shall be binding on the heirs, personal, representatives, successors and assignees of the Contractor.

1.5 In the event that the Contractor undergoes dissolution, termination of existence, insolvency, appointment of a receiver of any property of, assignment for the benefit of creditors, or commencement of any proceeding under any bankruptcy or insolvency law by or against the Contractor or any guarantor of the Contractor, the City shall have the right to declare the contract terminated and to pursue any remedies provided by the contract or at law or in equity.

1.6 Failure of the City to pursue its remedies at the time of commission of a breach of contract by the Contractor will not act as a waiver of the City's right to pursue said remedies at a later time.

1.7 The City reserves the right to use its own personnel and/or equipment to perform transportation services when deemed necessary or expedient, and to award separate contracts for transportation services as deemed necessary.

1.8 Fuel Adjustment: If the price of fuel increases or decreases by more than \$.199 per gallon from the 'Bid Base Price of Fuel,' 80 percent (80%) of the cost increase or decrease shall be debited or credited to the monthly invoice(s). The increase or decrease shall apply to each category of service, i.e., regular Newton METCO transportation services. The fuel cost increase or decrease must remain in effect from the first operating day of the month through the last operating day of the month based on the actual price paid per gallon. In order to receive reimbursement for increased fuel costs as provided herein, the Contractor must provide receipts for said fuel on a monthly basis throughout the contract term as verification of such increase, as well as an accurate accounting (live miles per trip) of the fuel used for the City's services. Miles-per-gallon shall be based on the bus manufacturer's specifications. Under no circumstances shall the City absorb fuel costs not associated with the contract. The Contractor agrees to maintain accurate and complete records relative to the use of fuel.

under the Contract which shall be made available to Newton METCO prior to the awarding of any fuel adjustment. (See also "Invoicing", Section 11.6)

Any change in the State motor vehicle fuel tax will be adjusted on a penny-for-penny basis during the life of the Contract. It will be separately computed outside the \$.199 adjustment limit, based on the gallons used per day as calculated above.

1.9 Bonds: The Contractor shall provide both a Performance and Labor and Materials Payment Bond, each in the sum of fifty percent (50%) of the total contract price of one (1) year, and in a form acceptable to the City. The bonds shall be provided within thirty (30) days of the bid award.

1.10 Indemnification: The Contractor acknowledges and agrees that it will be responsible as an independent contractor for all operations under this Contract and for all the acts of its employees and agents thereunder, and agrees that it will hold harmless, indemnify, and defend the City of Newton and its officers, boards, committees and employees from and against any and all loss, damage, cost, charge, expense or claim which may be made against it or them or to which it or they may be subject by reason of any alleged act, action, neglect, omission or default on the part of the Contractor or any of its agents or employees and will pay promptly on demand all costs and expenses. This indemnification is not limited by a limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor under the Workers' Compensation Act, Disability Benefits Act or other employees act.

1.11 Insurance: The Contractor, unless licensed under Massachusetts General Law c.159A and having complied with Section 6 thereof, must provide a motor vehicle liability policy or bond, both as defined in M.G.L. c.90, Section 34A, which provides for property damage insurance in the amount of no less than one million dollars (\$1,000,000) for each vehicle used in this transportation, and which provides for indemnity, protection or security on account of injury or death in the amounts as stated below.

1.11.1 No less than five million dollars (\$5,000,000) on account of injury and death of one person, and no less than ten million dollars (\$10,000,000) combined single limit insurance or bond shall also include extraterritorial coverage.

1.11.2 In addition, the Contractor must provide:

No less than one million dollars (\$1,000,000) on account of "personal injury and advertising injury." This coverage should include an endorsement for "abuse and molestation", including coverage for negligence arising from the employment, training, supervision, investigation and reporting in regard to incidents of abuse and molestation.

1.11.3 A Certificate of Insurance naming the City of Newton as an 'additional insured' must be filed with the City of Newton within thirty (30) days of the contract award. No vehicle shall be used by the Contractor for this transportation unless insured and inspected as herein provided, and the termination of such policy during the term of the contract shall be a breach thereof and the City shall forthwith terminate the contract. A Certificate of Insurance showing renewal of the policy must be filed annually on or before the renewal date with the City. The

City of Newton, 1000 Commonwealth Avenue, Newton, MA 02459, Attn.: Purchasing, shall also be named as the "Certificate Holder" on all certificates of insurance, which shall each require that no less than thirty (30) days prior written notice of cancellation shall be given to the Certificate Holder.

1.12 The Contractor shall comply with all Ordinances of the City of Newton, General laws and Regulations of the Commonwealth of Massachusetts, Federal Laws and Regulations authorized by law, applicable to the provisions of such contract, and shall be thoroughly familiar with same. The Contractor shall procure all applicable permits, licenses, and approval(s) necessary for the performance of services under this contract at the Contractor's expense.

2.0 Bid Requirements and Award

2.1 Each bidder shall provide a bid surety bond of 5%.

2.2 Bids shall be submitted in the manner provided in the bid form. Bids shall be submitted for the entire time of performance in the manner stated herein and as indicated on the bid form.

2.3 Calculation of Lowest Bidder: The City will determine the lowest overall contract price for the entire time of performance, one (1) year. See sections 2.3.1 through 2.3.5, below, for method of calculating the Total and Grand Total Estimated Contract Price for the contract.

2.3.1 Bus-Per-Day Rate: Bidders will multiply the Bus-Per-Day rate by the estimated number of 77 student seat passenger yellow school buses multiplied by 180 days in the school year in order to determine the Annual Bus-Per-Day Price of the contract.

2.3.2 Overtime: Bidders will multiply the Rate-Per-Hour for Overtime by the Estimated Annual Overtime Hours.

2.3.3 Supply, Installation, Maintenance and Monitoring of Digital Cameras for METCO buses: Bidders will multiply the annual price for a camera (as specified in this project manual) multiplied by the estimated number of cameras.

2.3.4 Total Estimated Contract Price: The Grand Total Estimated Contract Price will be determined for the METCO contract by adding the one (1) year Sub-total of the Bus-Per-Day Service, the Overtime Service and the supply, installation, maintenance and monitoring of security cameras.

3.0 Bid Submission Requirements

3.1 Qualification of Bidders: Bids may be submitted by companies, partnerships and corporations currently providing bus transportation services. Bidders must have a minimum of five (5) years experience in providing school bus transportation

services of similar fleet size and scope to the contract for which the bid is submitted. Bidders must submit a company history including year founded, headquarters, organization and management organization charts, total number of drivers, driver benefits, total number of company owned buses, mechanical repair facilities, fuel facilities and driver training and safety programs.

3.2 References: Bidders must submit a list of all public school departments for which the bidder performed transportation services within the five (5) years preceding the date of the bid including the names and telephone numbers of contact persons, years the contract was in effect, number of buses and bus yard address for each contract and the bid rates for current contracts only. Bidders must certify under pains and penalties of perjury that the company, partnership or corporation (as applicable) has not defaulted or been terminated for cause on any contract in the last five (5) years. Bidders must also certify that they are not currently in litigation with any community in which they provide business or, if in litigation, bidders must provide a summary of the nature of the litigation, the court of jurisdiction, case name and number(s) and other identifying information necessary in order to obtain access to court documents.

3.3 Financial Statement: Bidders must submit a financial statement for their last fiscal year of business attested to by a CPA that the financial statement is true and accurate to the best of his/her knowledge. The information will be considered 'Confidential', not for public view. The City reserves the right to obtain additional financial information.

3.4 Accident Records: Bidders must submit a list of all accidents for the five (5) years preceding the date of this bid. The list shall be prepared by the bidder's insurance carrier on their letterhead. Information shall include dates of accidents, bodily injuries, property damages, preventive or non-preventive, and payouts.

3.5 Bus inspection Reports: Bidders must submit the most recent bus inspection reports by the Massachusetts Department of Telecommunications and Energy (or equal Government authority) from another district of comparable size that the vendor is currently providing similar yellow bus transportation services.

3.6 Bus acquisition: Bidders must submit a letter from the bus manufacturer's representative verifying the availability, specifications and financing for the buses to be used under the Contract. See Section 7.0 School Bus Specifications. Buses must be no older than five (5) years at the start of this contract.

4.0 Scope of School Bus Transportation Services

4.1 The Contractor shall provide school bus transportation services for Newton Public Schools commencing July 1, 2012 as described below. The Newton METCO offices shall determine the actual number of buses required for daily transportation to and from schools and such determination shall govern as to the actual number of buses to be charged against the daily rate (see also Section 5.2). The City makes no representations or guarantees as to the number of buses that will be required over the lifetime of the contract. The following is a description of estimated FY 2013 transportation services:

- 4.1.1 To and from schools between Boston and Newton for the Newton Metropolitan Council for Educational Opportunity (Newton METCO) program: Approximately 416 Boston-resident students presently attend 21 Newton Public Schools utilizing nine (9) 77-passenger buses. See Appendix A.

4.2 Newton METCO shall have priority use of the bus fleet to meet all the transportation requirements set forth in these specifications. When not being used by Newton Public Schools or METCO, the Contractor may use the bus fleet at its own discretion.

5.0 Transportation To and From Schools

5.1 Definitions: For the purpose of these Specifications, the following terms shall have the meanings ascribed to them below:

- 5.1.1 Bar Charts: A graph indicating Operation Time by route and which indicates the assignment of specific routes to specific vehicles (see Appendices A, B and C). The Newton METCO program expressly reserves the right to assign specific routes to specific vehicles in order to reduce Operation Time and Overtime. The Newton METCO shall not be liable for payment of Operation Time and/or Overtime in a manner which is different from the organization devised by the Newton METCO program. See also, Section 5.2.
- 5.1.2 Bus-Per-Day Service: Bus-Per-Day Service shall be defined as Operation Time, as hereinafter defined, of up to five (5) hours per day for four (4) buses and six (6) hours per day for five (5) buses in the Newton METCO fleet. All services within the applicable Bus-Per-Day Service as defined in Section 5.1.2, including any late busses, shall be paid at the Bus-Per-Day Rate as specified in the Contractor's bid.
- 5.1.3 Head Counts: Daily documentation by route completed by each bus driver indicating the total number of students that boarded or exited the bus at each scheduled stop which shall be recorded on forms prepared by Newton METCO (see Appendices A and C for format, and Sections 5.3.1, 9.2, and 10.10).
- 5.1.4 NPS: Newton Public Schools Transportation Office and Newton METCO Transportation Office unless otherwise noted.
- 5.1.5 Operation Time: Continuous live mileage time from the pick-up of the first monitor or student at the first scheduled stop until the last scheduled drop-off of the last monitor or student for a particular route. Operation Time shall be determined by the amount of time required to complete all scheduled pick-ups and drop-offs as determined by Route Schedules and Bar Charts prepared

by Newton METCO. Operation Time shall be totaled separately for mornings and afternoons. Operation Time for afternoon routes shall begin as of the time the bus is scheduled to be at the school in order to pick up students. Time between routes (“interval time”) shall **NOT** be included in the calculation of Operation Time or Bus-Per-Day Service. Travel time to and from the bus terminal is **NOT** included in the calculation of Operation Time or Bus-Per-Day Service. Newton METCO may use any bus that does not utilize the allotted five (5) hours or six (6) hours Operation Time at their discretion.

- 5.1.6 Overtime: Approved Operation Time in excess of the applicable Bus-Per-Day Service as defined in Section 5.1.2, and as determined by NPS in accordance with Route Schedules and Bar Charts prepared by NPS. Overtime, if any, shall be calculated on a per bus basis in full fifteen (15) minute intervals, with no payment for intervals less than fifteen (15) minutes. NPS expressly reserves the right to assign particular routes to particular vehicles in order to reduce overtime and NPS shall not be liable for payment of overtime which results from the Contractor’s decision to organize routes and/or vehicles in a manner which is different from the organization devised by NPS.
- 5.1.7 Route Schedules: Bus schedules prepared by NPS which indicate, at a minimum, the time the bus is scheduled to make the first monitor or student pick-up and last monitor or student drop off (route start and end times), and the location of each stop on the route. Route Schedules may also include the precise time each stop is scheduled and the names of passengers assigned by bus stop. Afternoon schedules shall commence as of the time that the bus is scheduled to be at the school in order to pick up students as stated in the Route Schedules. NPS expressly reserves the right to assign particular routes to particular vehicles in order to reduce Operation Time and Overtime. NPS shall not be liable for payment of Operation Time and/or Overtime which results from the Contractor’s decision to organize route and/or vehicles in a manner which is different from the organization devised by NPS.
- 5.1.8 Time Checks: Documentation by route completed by each bus driver indicating the time that the bus commenced the route, arrived at each scheduled stop and completed the route, shall be recorded on forms supplied by NPS (see Appendices A and C for format, and see also Sections 5.3.1, 9.2, and 10.10). Notwithstanding the preceding sentence, when a bus monitor under the jurisdiction of Newton METCO is assigned to a bus route, the monitor will record time checks which shall establish official route times.

5.2 Daily Transportation: The Contractor shall be required to work with a representative of the Newton METCO Office concerning all matters involving transportation for the routes to and from Boston and Newton. The Contractor shall be required to use the bus fleet in the most efficient manner. NPS reserves the right to calculate and pay sums due based upon the most efficient organization of transportation as indicated by the Bar Charts. In addition, if the City awards a single

contract for both Newton in-City and Newton METCO transportation, then the City reserves the right to use interchangeably any bus in its fleet for both Newton in-City and Newton METCO service.

- 5.2.1 Number of Buses Required, Increases, Decreases: At the commencement of the contract, it is estimated that nine (9) buses will be required for Newton METCO transportation. The number of buses may increase up to twenty-five per cent (25%) or decrease by twenty-five percent (25%) during the one (1) year of the contract at the request of NPS without adjustment in the Bus-Per-Day Rate.

Buses added to the fleet must meet all existing specifications including the vehicle age, safety features and must be equipped with factory installed seat belts. The Contractor shall be given a maximum of forty-five (45) calendar days after written notice is received in which to procure additional buses. NPS shall give the Contractor a minimum of fourteen (14) calendar days prior written notice before removing a bus from the fleet. (Notice shall be deemed received within three (3) business days of mailing.)

- 5.2.2 Emergency Backup Buses: The Contractor shall have sufficient backup buses (1:10 minimum) and drivers available at all times of scheduled operation. A backup bus is to be used to replace a bus which is out of service for maintenance, repair or inspection, or to replace a bus that breaks down while in service. The backup buses must meet all existing specifications including the vehicle age, safety features and must be comparably equipped, including, but not limited to factory installed seat belts. Any bus used to replace a bus which breaks down in service must be able to reach the point of breakdown within thirty (30) minutes for Newton METCO routes. There shall be no additional charge for the use of any backup bus.

5.3 Bus Schedules: NPS shall prepare Bus Schedules for Newton METCO transportation. The Bus Schedules shall be designed so that most, if not all, required transportation can be completed within the applicable Bus-Per-Day Service as defined in Section 5.1.2. Overtime must be specifically authorized in advance by NPS, and shall be paid only when head counts, time checks and GPS records are prepared and submitted by the Contractor documenting that Overtime is required or when Overtime is authorized pursuant to the procedure outlined in Sections 5.3.1 and/or 5.3.2. NPS reserves the right to request that the Contractor provide a description of any route geography used by the Contractor to cover the Bus Schedules, including the names of all streets and the direction of travel over the same, in order to determine if the route is efficient.

- 5.3.1 Revisions: Bus schedules may be revised only by NPS and only in accordance with the following procedure. In the event that the Contractor determines that a route cannot be completed within the time specified in the Bus Schedule, then the Contractor shall prepare and submit to NPS at least two (2) weeks of accurate daily head counts, time checks and GPS records concerning any such route. NPS shall have the right to revise the Bus Schedule in accordance with the head counts, time checks and GPS records by adding such time as is needed to complete the Route or to

eliminate stops in order to reduce the amount of time required to complete the route. Adjustments to bus routes and schedules shall commence as of the date that a revised bus route and schedule is issued by NPS. NPS shall use its best efforts to issue a revised bus route within five (5) business days of receipt of all required head counts, time checks and GPS records.

- 5.3.2 Disputes: In the event that the NPS decides not to revise a Bus Schedule after completing the process outlined in subparagraph 5.3.1, then the Contractor shall have the right to request that NPS and the Contractor observe and/or ride the route in question on a mutually convenient date. Observation and/or riding shall take place during the normally scheduled time as established by the Bus Schedule. NPS shall have the right to require that any route be observed and/or ridden at least two (2) times in order to assess fluctuations in traffic, etc. and to base the revised route schedule on the average time it took to complete the route when observed and/or ridden. Adjustments to Bus Schedules shall commence as of the date that a revised Bus Schedule is issued by NPS. NPS shall use its best efforts to issue a revised Bus Schedule within five (5) business days of the last scheduled observation and/or riding of a particular route.

5.4 Special Schedules, Delayed Openings and Emergency Releases

- 5.4.1 Special Schedules: Regular Bus Schedules shall be waived for special occasions including, but not limited to the first day of school, the day before Thanksgiving, MCAS testing, graduation, step-up days, finals and professional development days (see Appendix E). The Contractor is expected to make arrangements with NPS at least two weeks prior to the early release, and to perform as efficiently as possible under the circumstances. The Contractor shall try to accommodate any informal early releases provided that regularly scheduled service is not affected thereby, and provided that there are no additional charges. Arrangements for informal early releases are the responsibility of the requesting school and the Contractor.
- 5.4.2 Delayed Openings and Emergency Releases: In the event of delayed openings and emergency releases due to inclement weather, power outages, building conditions, etc., the Dispatcher shall immediately contact drivers in order to implement revised transportation schedules in cooperation with the Newton METCO offices. The standard bus-per-day rate shall apply for all delayed openings and emergencies.

5.5 Late Arrivals, No-Shows, Unauthorized Stops

- 5.5.1 Late Arrivals: Each instance that a bus arrives at school (mornings or afternoons) after the scheduled time shall be considered a late arrival, and each instance that a bus arrives ten (10) or more minutes after the time of any scheduled route destination shall be considered a late arrival. The Contractor shall be responsible for notifying NPS of any schedule delays and late arrivals

immediately upon occurrence. A bus will not be charged with a late arrival if Newton Public Schools determines, upon receipt of a written report from the Contractor within twenty-four (24) hours, that the lateness is due to problems beyond the Contractor's control. If the Contractor fails to provide such notice by the next school day, the Contractor shall automatically be charged with the late arrival. A bus shall not be charged with more than one (1) late arrival per morning or afternoon. NPS reserves the right to deduct from the payments due to the Contractor up to one-half the bus-per-day charge and any Overtime of each bus that is late in each instance where the Contractor fails to explain such lateness or where NPS determines that such lateness is due to the fault of the Contractor. Lateness due to the fault of the Contractor shall include, but not be limited to, lateness that results from mechanical problems, an insufficient number of drivers and/or buses, and drivers who are not familiar with Route Schedules.

5.5.2 No-Shows: NPS reserves the right to deduct from sums due or that become due to the Contractor the full bus-per-day rate of any vehicle that fails to arrive at its scheduled destination and one-half the bus-per-day rate of each route impacted by the no-show.

5.5.3 Unauthorized Stops: NPS reserves the right to deduct from sums due or that become due to the Contractor one-half the bus-per-day rate for each vehicle for each instance, morning and/or afternoon, in which a vehicle makes a stop at a location other than a location authorized by NPS.

5.6 Emergency Transportation: In the event that the Contractor is temporarily unable to furnish transportation as scheduled or in emergencies, the City reserves the right to hire emergency substitute buses for such time as deemed necessary. The City shall deduct from the Contractor's invoices any costs incurred in connection with obtaining such emergency services. If the Contractor is unable to provide transportation for more than ten (10) days, such failure to provide transportation shall constitute a breach of the Contract and NPS shall have the right to terminate the Contract upon written notice to the Contractor.

5.7 School Cancellations: There shall be no charges for days when service is not provided for any reason, including, but not limited to closings for school vacations, holidays or cancellations due to states of emergencies, e.g., inclement weather, power outages, building conditions, etc. The NPS shall notify the Contractor immediately of any cancellation. The Contractor shall have an answering service and/or paging system for receipt of cancellation notices when the Dispatch Office is closed, and is also expected to monitor the radio for "no school" announcements and weather conditions. For the purposes of transportation, Newton METCO and private schools fall under the jurisdiction of Newton Public Schools' calendar including school cancellations; therefore, when Newton Public Schools is closed, transportation for Newton METCO and private schools is also canceled.

5.8 Evacuation Drills: All Newton public and private school students shall participate in emergency bus evacuation drills on location at each school in accordance with current State and Federal laws. Drills shall be scheduled through each school in consultation with the Contractor. The Contractor shall provide buses and drivers at no cost to the City for the evacuation

drills. The Field Service Representative shall be available upon request during each required evacuation drill (see Section 9.3.5).

5.9 Kindergarten Routes: All services within the applicable Bus-Per-Day Service as defined in Section 5.1.2 including kindergarten shall be paid at the Bus-Per-Day Rate as specified in the Contractor's bid. Presently, kindergarten routes are every day except Tuesday. In Newton, if a parent or guardian is not at the bus stop to meet the kindergartner, the driver shall radio the dispatcher and keep the child on the bus. The dispatcher shall note the child's name and direct the bus driver to proceed on the route. The dispatcher shall call the school and Newton Transportation Office immediately. After the last bus stop on the kindergarten route, the driver shall return to the bus stop to see if the parent has arrived. If the parent is still not there, the driver shall radio the dispatcher and then proceed to take the student back to school. The dispatcher shall call the school so that someone can meet the bus and student.

6.0 Field Trips and Athletic Events

The Contractor is not responsible for scheduling buses for field trips and athletic events.

7.0 School Bus Specifications

7.1 All buses used for the start of service pursuant to this contract must be brand new seventy-seven (77) passenger Type "D" forward engine transit buses that comply with all applicable Federal and Commonwealth of Massachusetts' regulations. The bus design must be able to safely negotiate Newton and Boston traffic and streets. The Contractor shall submit to the NPS Transportation Office no later than August 1 of each year of the contract, a complete list of all buses to be used under the contract, including serial numbers, vehicle identification numbers, year of manufacture, manufacturer's name, model and mileage. The foregoing information on the bus fleet shall be kept up-to-date at all times. **Buses can be no older than five (5) years old at the start of this contract.**

7.2 All buses shall be equipped with the bus manufacturer's installed seats at least twenty-eight (28) inches high (commonly referred to as "New York" seats), and factory installed lap belts (3 to a bench) which shall be color coded (3 colors) and retractable. The City reserves the right to negotiate replacing lap belts with bus factory installed shoulder and lap belt combinations upon availability. Furthermore, all buses must be equipped with heated mirrors; crossing arms with automatic resetting interrupt switches; internal and external public address systems; full length acoustic headlining, three (3) push out windows per side; diamond 3M grade reflective markings front, rear and sides; rear traction tires; shoulder pads; intermittent wipers; stop arms with high intensity 3M grade reflective markings; rear and mid bus heaters; outward opening powered doors with CT override; hoods over warning lights; and child checkmate system or equivalent.

7.3 All buses must be equipped with state of the art GPS tracking equipment such as Zonar Model V2J or an approved equal with a dedicated computer and screen to be located in the Newton dispatch office and may be reviewed by the appropriate NPS or NPS METCO or City personnel at any given time. These GPS systems must record bus location, speed and all start and stop times.

7.4 All METCO middle and/or high school buses, including late runs, must be equipped with state of the art digital video monitoring devices such as SEON Trouper FG4 4 channel w/ 160 GB hard drive day/night cameras with audio or an approved equal capable of videoing activities on the bus while in use. The video tape retention period shall be at least thirty (30) days of which the school department or City can request copies of the tapes at any time. When such requests are made, the contractor shall make the video tape(s) available within a 24 hour period during business hours. The contractor will be responsible for supplying, installing and operating the video cameras and recorders. The contractor must also have readily available at least one (1) spare digital video monitoring device as a back up and one available in the Newton office for reviewing videos.

7.5 Air brake systems must include air dryers to eliminate any condensation problems.

7.6 No buses are needed for field trips and athletic events.

7.7 In the event that NPS determines that a monitor is required on a bus, then the Contractor may be asked to hire a monitor who shall be an employee of the Contractor. NPS and the Contractor shall execute a separate written agreement for the monitor, outlining the rate of payment, number of hours and invoicing procedures.

7.8 All buses shall display bus identification markings provided by NPS and Newton METCO in accordance with Bus Route Schedules so that students can easily identify buses from the bus stop.

7.9 All buses shall be equipped with state-of-the-art walkie-talkie cellphones (Nextel or approved equal) in good condition. The communications system shall transmit on an exclusive channel. The Contractor shall insure full communication coverage between the dispatch office and all buses operating within the scope of the contract including the City of Newton, within the Newton METCO service area and between Newton and Boston. Students may use the cellphone to call parents only in emergencies.

Use of the communications system pursuant to this contract must comply with all applicable Federal and Commonwealth of Massachusetts regulations. NPS must approve the proposed walkie-talkie cellphones and shall be provided, upon request, a walkie-talkie for monitoring and emergency purposes. NPS reserves the right to deduct liquidated damages from payments due in an amount equal to one-half the bus-per-day rate for each instance, morning and/or afternoon, in which a bus is discovered without a working walkie-talkie cellphone.

7.10 The Contractor shall be receptive to any alternative energy (e.g., compressed natural gas and electric) devices or programs that will save energy and reduce harmful emissions, and will work closely with the City to determine the feasibility of any such program, and if feasible, with implementing same.

7.11 Newton METCO reserve the right to install security systems in the buses. The Contractor shall be responsible for supplying and installing the equipment, as well as its operation and maintenance as described within this project manual. Any equipment so-installed shall remain the property of Newton.

8.0 Bus Inspections, Maintenance and Storage

8.1 All bus inspections shall be in compliance with the laws of the Commonwealth of Massachusetts. NPS reserves the right to request copies of Commonwealth of Massachusetts' inspection reports for all buses in the fleet at anytime.

8.2 All buses shall be maintained in first class operating and mechanical condition. Before leaving the yard each morning, each driver must walk around the bus and complete a Vehicle Inspection Report (on a form or electronic system in compliance with all State regulations) to ensure that all buses are safe and clean inside and out.. In addition, each driver shall make walkie-talkie communications contact with the Dispatcher in order to ensure that the communications system is working properly. Any bus failing the inspection or communications check shall not be used until the problems are corrected. Vehicle Inspection Reports shall be filed daily with the Dispatcher and shall be available upon request to the Newton METCO by the end of the day on which the request is made.

8.3 NPS reserves the right to inspect buses parked at a school for cleanliness, graffiti, and similar problems relating to the general condition of the bus and for the presence of cigarette smoke. NPS reserves the right to require the Contractor to remove dirty buses from service until they are cleaned and to request such action as may be appropriate to prevent drivers from smoking on buses. NPS also reserves the right to inspect buses parked at a school for properly operating communications systems, including digital phones, and may request drivers to call the Dispatcher or otherwise demonstrate that two way communications systems are working.

8.4 The Contractor must report all cases of vandalism in writing to the NPS Transportation office within two (2) hours of a morning incident or by the opening of school the following day for afternoon incidents. Interior or exterior damages shall be repaired immediately with the Contractor assuming all costs. The Contractor may attempt to recover losses for vandalism from private parties by working through the school Principal, the NPS Transportation Office or the Newton METCO office. Student transportation privileges may only be suspended by the school, NPS or Newton METCO.

8.5 The bidder must have access to sufficient garage/maintenance facilities and mechanics to ensure timely repairs so as not to disrupt transportation services. The successful bidder shall, within thirty (30) days of notification of award of the contract, provide NPS with the name and address of the garage and a statement from the garage owner regarding a good working relationship. The Contractor must keep this information current throughout the term of the contract.

8.6 The Contractor's bus storage yard shall be located in Newton or a city or town contiguous, i.e., in close proximity to Newton. The successful bidder shall, within thirty (30) days of notification of award of the contract, provide NPS with the address of the proposed bus yard and evidence of a lease agreement. The City reserves the right to reject the proposed site. In the event of recurrent problems on the Newton METCO bus routes, the City reserves the right to require, by written notice to the Contractor, that an emergency backup bus or buses and driver(s) be permanently located in Boston at no additional charge. Recurrent problems shall include, but not be limited to, lateness and inability to provide back-up buses within time frame required herein. The Contractor must comply within three (3) days of the written notice, otherwise, the

City shall deduct from the payments due under the Contract, one-half the bus-per-day cost for each day that the Contractor fails to comply.

9.0 Dispatching and Field Service

9.1 The Contractor shall maintain a dispatch office with 24-hour/7-days-a-week emergency telephone answering service and a state-of-the-art walkie-talkie cellphone system sufficient to maintain contact between the Dispatcher and drivers at all times while buses are in service for NPS pursuant to these Specifications. The dispatch office must have a fax machine, e-mail system and printer and copier. The successful bidder shall supply the City within thirty (30) days of notification of award of the contract with the address of the dispatch office. The Contractor shall supply the NPS Transportation office, by August 1 of each contract year, with the Dispatchers' names and telephone numbers. The Contractor shall be required to install a telephone line in the dispatch office for the exclusive use of NPS business. The Contractor must notify the NPS Transportation office in advance of any changes in location or personnel.

9.2 A qualified Dispatcher must be on duty and accessible to schools, NPS staff and parents while any bus is in service for Newton METCO including regular and late bus transportation. The Dispatcher must be thoroughly familiar with Newton METCO bus routes as well as the geography of the cities of Newton and Boston. The Dispatchers must have sufficient training to effectively handle routine communications and emergency contacts between drivers, dispatch base and relevant school officials, solve problems related to driver assignments, implement emergency plans to counteract service disruptions, and maintain the highest level of service on a daily basis. Dispatchers must ensure drivers' timely and accurate preparation and filing of incident and accident reports, time checks and head counts before drivers are released from duty.

9.3 Field Service Representative: The Contractor must employ a qualified Field Service Representative for the Newton contract who will work with the Dispatcher out of the dispatch office (as in 9.1). The Field Service Representative must be thoroughly familiar with Newton METCO bus routes as well as the geography of the cities of Newton and Boston. The Field Service Representative must be on call while any bus is in service for Newton METCO, including regular and late bus transportation. The Field Service Representative's duties shall include but not be limited to the following:

9.3.1 Conferring with the Newton METCO office regarding schedules, bus stops, routes, ridership, student conduct, accidents, vandalism, driver performance, safety related matters and emergencies. The Field Service Representative shall report to the Newton METCO office at least once per day and upon request by NPS.

9.3.2 Investigating complaints including service irregularities, driver performance and conduct, student behavioral problems, and vandalism. In each case, the Contractor is responsible for providing an immediate oral report of any incident upon occurrence, submitting an initial written report to the Newton METCO offices, including all names of offenders and a specific description of the incident, within two (2) hours of any incident. The Contractor must submit a final written report with resolution before the NPS's close of business on the day of the incident for any morning

incident, and within one (1) hour of the opening of business the next day for any afternoon incident. Drivers must not be released from duty at the conclusion of routes until incident reports are complete, on file and comprehensible.

- 9.3.3 Ensuring compliance with NPS and Newton METCO accident procedures and all future amendments and revisions to same (see Appendix F) and as described in Section 9.5.
- 9.3.4 Visiting schools and bus stops to monitor compliance with bus schedules and conferring regularly with school representatives as directed by Newton METCO.
- 9.3.5 Scheduling and overseeing all school bus evacuation drills.
- 9.3.6 Spot checking driver adherence to schedules, stops and safe driving practices, including observing a particular route at the request of the NPS Transportation or Newton METCO offices.
- 9.3.7 Working with the NPS Transportation and Newton METCO offices, Newton Police Safety Officer and Boston Police Departments on safety issues including traffic congestion, parking problems and incidents where drivers of private vehicles violate motor vehicle rules regarding school bus safety.
- 9.3.8 Conducting safety seminars for all drivers in preparation for the new school year.

9.4 Accident Procedures: In the event of an accident involving any of the Contractor's vehicles while in service for the City of Newton, the bus driver shall immediately notify the Dispatcher and the Dispatcher shall immediately notify the respective Police Department. The Contractor should instruct its drivers to identify all passengers on board at the time of the accident and to require all passengers to remain at the scene until the Field Service Representative arrives, subject, however, to contrary directions of emergency personnel. The Dispatcher shall contact the Newton METCO Office, as applicable, and the school by telephone no later than fifteen (15) minutes after the accident. The Dispatcher shall dispatch the Field Service Representative to the scene of the accident after contacting the Police. The Field Service Representative shall confirm the names of all passengers who were on the vehicle at the time of the accident and, if passengers are transported from the scene for medical attention, the Field Service Representative shall confirm the names of the injured and the destination(s) to which the injured were transported. Reference Newton Public Schools Student Transportation Crash Guidelines in Appendix F.

9.5 Accident Reports: The Contractor shall file a preliminary written accident report with NPS no later than the close of the business day on which the accident occurred. For any accident which occurs after NPS's close of business (after 5:00 p.m.), such accident report shall be filed within one (1) hour of the opening of business the next day. The Contractor shall ensure that drivers are not released from duty until complete, clearly written accident reports are on file. The Contractor shall file a final written report completed by the Field Service Representative within twenty-four (24) hours of the accident.

Such final written report shall include the driver's written report (including an "Operator's Report" whenever such report is required to be completed by state law) and a written assessment of the accident prepared by the Field Service Representative. The Contractor shall obtain Police Reports from the Police Department which has jurisdiction for the location where the accident occurred and forward copies to NPS within twenty-four (24) hours after the accident.

9.6 At the end of each contract year, or upon request, the Contractor shall submit a formal accident report summary from its insurance company covering the entire contract from its inception. The insurance company report shall include the date of each accident, driver name, property damage, bodily injuries, preventable or non-preventable, claims and current status.

10.0 Driver Qualifications and Driving Rules

10.1 Number of Drivers

10.1.1 Permanent Drivers: The Contractor must employ a sufficient number of permanent drivers to be able to assign one to each bus in the daily fleet. The Contractor shall make a concerted effort to keep driver turnover to a minimum, and maintain consistent bus assignments. The Newton METCO office, however, reserve the right to demand a change of drivers at any time without written notice.

10.1.2 Substitute Drivers: The Contractor shall have a sufficient number of substitute drivers who must be available to provide service at all times while buses are in service for NPS such that there are no interruptions in regularly scheduled service. (See also, Section 5.2.2 in regard to backup buses.)

10.2 All drivers shall be licensed in accordance with the Commonwealth of Massachusetts General Laws. The Contractor must submit a list of all drivers' names, addresses, birth dates, license numbers and expiration dates, and bus assignments to the NPS Transportation office by August 15. The Contractor shall attest to the fact that all drivers listed passed a Driver Training and Safety Program. The list shall be kept up-to-date and resubmitted annually by August 15. The Contractor shall maintain a personnel file for each employee connected to the performance of this contract. The files shall include the history of each driver while in the employ of the Contractor. The City reserves the right to request the complete personnel file of any Contractor's employee involved in an accident or incident while providing transportation pursuant to an investigation of employee misconduct connected to the performance of this contract. Drivers must be able to communicate clearly with the Dispatcher and students to provide assistance and be able to respond to emergencies.

10.3 The Contractor shall (at no expense to the City) require each driver to undergo an annual physical examination including a TB test by a physician.. The Contractor shall maintain the drivers' health records and shall make them available to NPS Transportation office upon request.

10.4 Prevailing Wage Rates: School bus drivers shall be paid based on the prevailing wage rates in accordance with Commonwealth of Massachusetts General Laws, Chapter 71, Section 7A. (The applicable wage rates are included with the bid submittal forms.)

10.5 The Contractor shall employ careful, temperate and courteous drivers. In the interests of the safety and well-being of students, drivers must be able to communicate clearly with the students to provide assistance and respond to emergencies. The Contractor shall not permit rude, flirtatious or abusive behavior or language by drivers toward students, school personnel or the public. All drivers shall prominently display a photo ID badge with the driver's name, ID number and the Contractor's name.

10.6 Drivers shall maintain proper attire and a high standard of personal hygiene at all times. Long hair must be tied back, braided or put on the top of the head to keep out of the driver's eyes. The following articles of clothing are not permitted: tank tops, body shirts, shorts, spandex tights, ponchos, sandals, flip-flops, slippers, cowboy hats, high heels (limit 1-1/2"), and clothing or buttons judged by the Newton METCO offices as inappropriate. Clothing shall be smoke-free. Newton METCO reserve the right to demand the transfer or removal of any driver because of personal hygiene or attire.

10.7 While performing services encompassed by this contract, drivers are not permitted to carry unauthorized passengers, pets or cargo, or smoke, or distribute foods, beverages or any other substances to passengers. All buses shall be smoke-free, i.e., there shall be no smoking permitted on the buses at anytime. There is also no smoking allowed anywhere on school property. Newton METCO reserve the right to demand the transfer or removal of any driver.

10.8 The Contractor shall arrange compulsory Driver-Training and Safety Programs which drivers must attend before they are allowed to drive under the City contract. The course shall deal with student, staff and public interaction (including sexual harassment and anti-bullying); safe driving habits (including defensive and inclement weather driver's training as well as evacuation drills); proper use of walkie-talkie cellphone communication systems, wheelchair lifts and restraints; and emergency procedures in accordance with the Commonwealth of Massachusetts General Laws and City guidelines.

In addition, all drivers shall be trained on how to recognize the symptoms of a severe allergic reaction and how to administer an Epinephrine Auto Injector (Epi-Pen). This training will be provided by the Newton Schools Health Services Department prior to the beginning of each school year.

All drivers shall have at their disposal an emergency cleanup kit containing rubber gloves, paper towels, plastic bags, moist towelettes and a germicide, and be instructed as to its use. All drivers must attend the course annually. New drivers hired during the year are under the same obligations. The Contractor must submit to the NPS Transportation office the program description and attendance sheets within one week after completing the program. City of Newton staff shall be invited to observe and participate in the training and safety programs at their discretion.

10.9 Driver Training: The Contractor shall provide each driver with a copy of the route schedules, maps and NPS procedures, e.g., accidents and kindergarten drop offs. On-the road training shall include the actual routes to which the

driver will be assigned. Drivers must complete a sufficient number of dry runs to insure familiarity with the routes such that drivers will be able to complete the routes within the scheduled times. Drivers shall always operate buses with the highest degree of safety and never allow the number of passengers to exceed the bus capacity. There shall be no standees; the driver shall not move the bus until every student is safely seated. Drivers shall stop only at designated stops. Drivers shall never leave the bus with the engine running and shall not idle the bus more than five (5) minutes. Upon the completion of each bus trip, the driver shall perform a walk through inspection for students napping, lost property, vandalism and trash.

10.10.1 Route Verification: The Contractor shall supply NPS with daily documentation of Head Counts, Time Checks and mileage (on forms provided by Newton METCO) until precise routes are established by Newton METCO. The documentation shall be filed with the Dispatcher immediately upon completion of each run. Newton METCO reserves the right to request at any time that the Contractor record and submit Head Counts and Time Checks in order to verify ridership and adherence to routes, schedules and bus stops.

10.11 Student Behavior: Drivers shall pull over and report improper student behavior on school buses to the Dispatcher who shall immediately notify the Newton METCO office . Drivers shall never deny a student transportation to or from school or remove a student from the bus . Student transportation privileges may only be suspended by the school or Newton METCO. Bus drivers have no involvement or jurisdiction regarding bus passes. Newton METCO reserves the right to demand the transfer or removal of any driver unable to maintain reasonable discipline on the bus.

10.12 At the discretion of NPS or Newton METCO, the Contractor's failure to ensure that drivers adhere to the qualifications and rules stated herein may result in a deduction from payments due to the Contractor up to one-half the bus-per-day (morning or afternoon) for each instance. NPS or Newton METCO will provide the Contractor with written notice of the violation and intent to deduct from payments due within seven (7) days of discovery and investigation of each instance.

10.13 CORI Checks: Newton Public Schools has been certified by the Criminal History Systems Board for access to all criminal case data including conviction, non-conviction and pending. Every school bus driver must submit to an annual NPS CORI check before she/he is allowed to drive under the NPS contract(s). NPS and Newton METCO reserve the right to demand the transfer or removal of any driver.

11.0 Invoicing

11.1 The Contractor shall submit invoices in triplicate to Newton Public Schools, Accounts Payable, 100 Walnut Street, Newtonville, MA 02460, on a monthly basis for daily transportation services completed. All services within the bus-per day amount of hours shall be paid at the quoted bus-per-day rates. Invoices for field trips and athletic events should be submitted within fifteen (15) days of providing the service(s).

11.2 Daily Transportation Service: The Contractor shall submit separate invoices for daily service for buses providing transportation between Boston and Newton for the Newton METCO Program (“Newton METCO Transportation”). Each invoice shall include the following:

- a) contract number;
- b) dates of service;
- c) total number of buses per day;
- d) Bus-Per-Day rate;
- e) total amount due which shall be based on the Bus-Per-Day rate.

11.3 Overtime: Separate invoices must be submitted for Overtime.

Overtime shall be calculated on a per vehicle basis. Approved Overtime shall be reimbursable at the quoted hourly rate in full fifteen minute intervals with no payment for Overtime of less than fifteen (15) minutes. NPS shall not be liable for payment of Overtime claimed for any route for which NPS has not scheduled Overtime on its Route Schedules and Bar Charts. The Contractor must request and NPS must issue a revision to the Route Schedule and Bar Chart in the manner provided in Section 5.3 before Overtime will be paid on any route for which NPS has not scheduled overtime. Payment for any additional Overtime approved after the start of the school year shall be paid as of the effective date of the route revision.

11.3.1 Invoicing: Approved Overtime shall be invoiced each month on a per vehicle basis. The Contractor shall submit separate Overtime invoices for Newton METCO transportation. Each invoice for Overtime shall include for each route:

- a) route Schedule number and/or vehicle number;
- b) total hours of overtime per day for each route;
- c) number of days of overtime for each route; and
- d) total amount of overtime.

11.3.2 Head Counts and Time Checks: In order to receive payment for Overtime, the Contractor shall submit completed head counts, time checks and GPS records as specified in Section 5.3. Newton METCO reserves the right to revise Route Schedules and Bar Charts in accordance with head counts, time checks and GPS records in order to reduce the amount of time required to complete any route.

11.3.3 Excluded Overtime: Any overtime which has not been approved in advance by NPS in accordance with Bar Charts and Route Schedules prepared by NPS. In addition, any overtime which is incurred as a result of the Contractor’s failure to meet established Route Schedules, including, but not limited to, overtime caused by mechanical problems, drivers’ performance, unscheduled stops, weather and abnormal traffic conditions.

11.4 Field Trips and Athletic Events: Newton METCO does not include field trips and athletic events.

11.5 Adjustments to Invoices: NPS reserves the right to adjust each invoice for services not provided or for service not provided in accordance with the terms of the Contract and/or Specifications. Adjustments to invoices for late arrivals, no-shows and unauthorized stops shall be made in the manner provided in Section 5.5. In addition, for each such instance of a failure to comply with the requirements of the contract and/or specifications, including but not limited to matters involving equipment, and drivers, NPS shall have the right to deduct an amount to equal one-half the daily charge per vehicle for each such violation occurring in the morning or the afternoon. Written explanation of each violation and deduction shall be included with the invoice (see Section 5.5).

11.6 Fuel Adjustment: Payment or credit for fuel cost adjustment shall be made in accordance with Section 1.8, provided that in order to adjust payment for any such increase or decrease, the Contractor must provide receipts for said fuel on a monthly basis throughout the contract term as verification of such increase, as well as an accurate accounting (live miles per trip) of the fuel used for the City's services. ***No payment will be made for fuel cost adjustment charges for which receipts were not received by NPS within thirty (30) days of the date of the increase in the price of fuel. No payment shall be made for fuel escalation increases received after June 30th in any year.***

11.7 Payment of Invoices

11.7.1 The City will use its best efforts to render payment within forty-five (45) days of receipt and verification of properly completed invoices NPS must verify all invoices before they are sent to the Newton Comptroller's Office for processing. (Completed invoices are generally processed by the Comptroller's Office for payment on the 15th and 30th of each month.) Newton METCO expressly reserves the right to request such additional information as may reasonably be required in order to verify the sums charged as stated in the invoices.

11.7.2 Equal Payments: The City offers the Contractor the option of receiving equal payments over the ten month school year provided that invoices are submitted as follows: The Contractor shall mail or deliver separate invoices for Newton METCO Transportation to Newton Public Schools, which must be received by NPS Accounts Payable no later than the 5th of each month, or, if the 5th falls on a weekend or holiday, the next regular business day after the 5th. Each invoice will represent one tenth (1/10) of the total estimated annual contract price for Newton METCO transportation. For purposes of this provision, the "total estimated contract price" is defined as the total number of buses for each service multiplied by 180 days multiplied by the applicable bus-per-day rate. NPS will process payment to be received by the Contractor at the address specified by the Contractor no later than the 15th of the next successive month (the month following the invoice), or if the 15th falls on a weekend or holiday, the next regular business day after the 15th.

- 11.7.3 The City and NPS shall not be liable for consequential or other damages that may be incurred by the Contractor as a result of late payments, and, in particular, as a result of late payments that result from the Contractor's failure to provide information required on each invoice. The City and NPS shall not be liable for the payment of interest on any sums due to the Contractor.

End of Specifications

**CITY OF NEWTON, MASSACHUSETTS
PURCHASING DEPARTMENT
GENERAL TERMS AND CONDITIONS**

1. The right is reserved to reject any and all bids, to waive informalities, and to make award as may be determined to be in the best interest of the City of Newton.
2. Prices quoted must include delivery to the City, as specified on the Work Order.
3. No charges will be allowed for packing, crating, freight, Express or cartage unless specifically stated and included in the bid.
4. The award to the successful bidder may be canceled if successful bidder shall fail to prosecute the work with promptness and diligence.
5. Time in connection with discount offered will be computed from the date of delivery to the City, as specified on purchase order, or from date correct invoice is received by the City, if the latter date is later than the date of delivery.
6. The successful bidder shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of articles furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Seller.
7. The Seller shall indemnify and save harmless the City and all persons acting for on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Seller, within a reasonable time, will at its expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment or apparatus, and refund the sums paid therefor.
8. The successful bidder shall comply with all applicable Federal State and Local laws and regulations.
9. Purchases made by the City are exempt from Federal excise taxes and bid prices must exclude any such taxes. Tax exemption certificates will be furnished upon request.
10. If so stated in the INVITATION FOR BID the successful bidder will be required to furnish a performance and/or a labor and material payment bond, in an amount, in a form and with a surety satisfactory to the City. The bidder shall be responsible for the cost of the bond(s).
11. If the Invitation for Bids requires bid surety, this surety shall be in the form of a cash, bid bond, cashier's check, treasurer's check, or certified check on a responsible bank, payable to the City of Newton, and must be filed with the original bid in the Office of the Purchasing Agent. Failure to do so will lead to rejection of bid. The bid surety will be returned to the successful bidder within seven (7) days execution of awarded, and approval by the City of performance and/or payment bond(s). In case of default, the bid surety shall be forfeited to the City.
12. Verbal orders are not binding on the City and deliveries made or work done without formal Purchase Order or Contract are at the risk of the Seller or Contractor and may result in an unenforceable claim.
13. The Seller shall agree to indemnify, defend and hold the City harmless from any and all claims arising out of the performance of this contract.
14. "Equality - An item equal to that named or described in the specifications of the contract may be furnished by the Vendor and the naming of any commercial name, trademark or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition but shall establish a standard of equality only. An item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform at least equally the function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. The name and identification of all materials other than the one specifically named shall be submitted to the City in writing for approval, prior to purchase, use or fabrication of such items. Subject to the provisions of M.G.L., Ch. 30, Sec. 39J, approval shall be at the sole discretion of the City, shall be in writing to be effective, and the decision of the City shall be final. The City may require tests of all materials so submitted to establish quality standards at the Vendor's expense. All directions, specifications and recommendations by manufacturers for installation, handling, storing, adjustment and operation of

their equipment shall be complied with; responsibility for proper performance shall continue to rest with the Vendor. For the use of material other than the one specified, the Vendor shall assume the cost of and responsibility for satisfactorily accomplishing all changes in the work as shown. If no manufacturer is named, the Vendor shall submit the product he intends to use for approval of the City. Except as otherwise provided for by the provisions of M.G.L., Ch. 30, Sec. 39J, the Vendor shall not have any right of appeal from the decision of the City condemning any materials furnished if the Vendor fails to obtain the approval for substitution under this clause. If any substitution is more costly, the Vendor shall pay for such costs. Notice is hereby given that the City of Newton Minority/Women Business Enterprise Plan dated December 1999 is applicable to all City of Newton contracts for materials supplies. A copy of this plan may be obtained from the Purchasing Department.

15. Notice is hereby given that the City of Newton Minority Business Enterprise Plan and the Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action is applicable to all City of Newton contracts in excess of \$50,000.00. A copy of these plans may be obtained from the Purchasing Department.

16. Right To Know:

Any vendor who receives an order or orders resulting from this invitation agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to M.G.L., Ch. 111F, SS8, 9 and 10 and the regulations contained in 441 CMR SS 21.06 when deliveries are made. The vendor agrees to deliver all containers properly labeled pursuant to M.G.L. Ch. 111F, SS 7 and the regulations contained in 441 CMR SS 21.05. Failure to submit an MSDS and/or label on each container will place the vendor in noncompliance with the purchase order. Failure to furnish MSDSs and/or labels on each container may result in civil or criminal penalties, including bid debarment and action to prevent the vendor from selling said substances or mixtures containing said substances within the Commonwealth. All vendors furnishing substances or mixtures subject to Chapter 111F of the M.G.L. are cautioned to obtain and read the law and rules and regulations referred to above. Copies can be obtained from the State House Book Store, Secretary of State, State House, Room 117, Boston, MA 02133, (617-727-2834) for \$2.00 plus \$.65 postage.

17. INSURANCE REQUIREMENTS

The Contractor shall provide insurance coverage as listed below. This insurance shall be provided at the Contractor's expense and shall be in full force and effect during the full term of this Contract.

WORKER'S COMPENSATION

Worker's Compensation:

Per M.G.L. c.. 149, s. 34 and c.. 152 as amended.

SEE SECTION 1.11 WITHIN PROJECT MANUAL FOR SPECIFIC MINIMUM INSURANCE REQUIREMENTS.

The City shall be named as additional insureds on the Contractor's Liability Policies.

The Contractor shall not commence the work until proof of compliance with this has been furnished to the City by submitting one copy of a properly endorsed insurance certificate issued by a company authorized to write insurance in the Commonwealth. This certificate shall indicate that the contractual liability coverage is in force.

The Contractor shall file the original and one certified copy of all policies with the City within ten (10) days after contract award. If the City is damaged by the Contractor's failure to maintain such insurance and to so notify the City, then the Contractor shall be responsible for all reasonable costs attributable thereto.

Cancellation of any insurance required by this contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and City at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

**FAILURE TO COMPLY WITH THESE TERMS AND CONDITIONS COULD RESULT IN THE
CANCELLATION OF YOUR CONTRACT.**

Appendices A – C = Separate File

APPENDIX LIST

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2012-2013 Bus Schedules 33
- Appendix B - NPS Calendar 2012-2013, School Hours, Special Schedules 4
- Appendix C - Student Transportation Crash Guidelines 2

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